

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

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|-------------------------|---|-------------------------------|
| 1. MATTHEW HIGGINS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | Case No. <u>16-CV-573-RAW</u> |
| |) | |
| 1. TYSON POULTRY, INC., |) | |
| 2. TYSON FOODS, INC., |) | |
| |) | |
| Defendants. |) | |

DEFENDANTS' NOTICE OF REMOVAL

TO THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1441, *et seq.*, Defendants Tyson Poultry, Inc. and Tyson Foods, Inc. ("Tyson") give notice of the removal of this action from the District Court of McCurtain County, Oklahoma to the United States District Court for the Eastern District of Oklahoma. Defendants remove the case without waiving, and while reserving, all procedural and substantive rights and defenses. Defendants state the following in support of removal:

1. On or about November 22, 2016, Plaintiff filed his Petition against Defendants in the District Court of McCurtain County, Oklahoma, captioned *Matthew Higgins v. Tyson Poultry, Inc. and Tyson Foods, Inc.*, Case No. CJ-2016-122 (the "State Court Action").

2. In his Petition, among other claims, Plaintiff asserts claims for gender discrimination, sexual harassment, and retaliation under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*, and for interference and retaliation under the Family and Medical Leave Act, 29 U.S.C. § 2601, *et seq.* (Petition, Counts I and III).

3. Accordingly, this Court has original federal question jurisdiction under 28 U.S.C. § 1331 because the claims contained in Counts I and II of Plaintiff's Petition are based on claims arising under the laws of the United States of America.

4. Defendants were served with the Summons and Petition in the State Court Action on December 7, 2016. Pursuant to 28 U.S.C. § 1446(b), Defendants have 30 days following service to remove this action to this Court; the date on or before which Defendants are required by law to remove this action is January 6, 2017, and this Notice of Removal is timely filed.

5. The District Court of McCurtain County, Oklahoma is located within the Eastern District of Oklahoma. Venue is proper in this Court because it is the "district and division embracing the place where such [state court] action is pending." 28 U.S.C. § 1441(a). This Notice of Removal is appropriately filed with the Court Clerk's Office in Muskogee.

6. In accordance with 28 U.S.C. § 1446(a), a copy of the entire file in the State Court Action, including all pleadings and papers that have been filed and served on Defendant in the State Court Action, are attached to this Notice as **Exhibit 1** (Petition), **Exhibit 2** (Summons), and **Exhibit 3** (Entry of Appearance for both of Plaintiff's Counsel). Plaintiff has not served upon Defendants any other process, pleadings or orders.

7. Also attached to this Notice as **Exhibit 4** is a copy of the docket sheet from the State Court Action.

8. Defendants will promptly, upon filing this Notice of Removal, give written notice to Plaintiff's Counsel and will file a copy of this Notice of Removal with the District Court of McCurtain County, Oklahoma, as required by 28 U.S.C. § 1446(d). Attached to this Notice as **Exhibit 5** is a copy of the Notice of Defendants' Notice of Removal to Federal Court, which is being filed with the District Court of McCurtain County, Oklahoma.

9. Exhibits 1 through 5 constitute all records and proceedings had in the State Court Action.

WHEREFORE, Defendants hereby notify this Court, Plaintiff, and the District Court of McCurtain County, Oklahoma that the above-captioned matter has been removed to this Court.

Respectfully submitted,

/s/ J. Randall Coffey

J. Randall Coffey

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ATTORNEYS FOR DEFENDANTS

TYSON POULTRY, INC. AND

TYSON FOODS, INC.

CERTIFICATE OF SERVICE

I certify that, on this 23rd day of December, 2016, a true and correct copy of the above and foregoing DEFENDANTS' NOTICE OF REMOVAL was filed using the Court's CM/ECF system, which will automatically send notice of filing to the following:

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ATTORNEYS FOR PLAINTIFF
MATTHEW HIGGINS

/s/ J. Randall Coffey
Attorney for Defendant